

**MAY 18 2006**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

CAROL ANN LEVINE,

Plaintiff - Appellant,

v.

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA; et al.,

Defendants - Appellees.

No. 05-15392

D.C. No. CV-03-02434-WHA

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
William H. Alsup, District Judge, Presiding

Submitted May 15, 2006 <sup>\*\*</sup>

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Carol Ann Levine appeals from the district court's order denying her motion for an extension of time to appeal the judgment in her action alleging retaliation

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

for filing state and federal discrimination charges. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for abuse of discretion, *Marx v. Loral Corp.*, 87 F.3d 1049, 1053 (9th Cir. 1996), and we vacate and remand.

The district court did not rule on the merits of Levine's timely pro se motion for an extension of time to file a notice of appeal on the ground that she had already filed an untimely notice of appeal. *See* Fed. R. App. P. 4(a)(5)(A) (providing that the district court may extend time to file the notice of appeal upon a party's motion). Because it was untimely, the initial notice of appeal was not effective and did not divest the district court of jurisdiction. *See Marx*, 87 F.3d at 1053-54 (finding no abuse of discretion in district court's grant of motion for extension filed after untimely notice of appeal); *see also Ruby v. Sec'y of the Navy*, 365 F.2d 385, 389 (9th Cir. 1966) ("Where the deficiency in a notice of appeal, by reason of untimeliness, lack of essential recitals, or reference to a non-appealable order, is clear to the district court, it may disregard the purported notice of appeal and proceed with the case, knowing that it has not been deprived of jurisdiction."). We therefore vacate and remand so that the district court may consider the merits of Levine's extension motion.

The parties shall bear their own costs on appeal.

**VACATED and REMANDED.**